



US Army Corps of Engineers Baltimore District



MD 24 Advisory Committee Meeting

Bel Air, Maryland
April 7, 2010

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Chief, Maryland Section Northern
US Army Corps of Engineers
Baltimore District



Overview

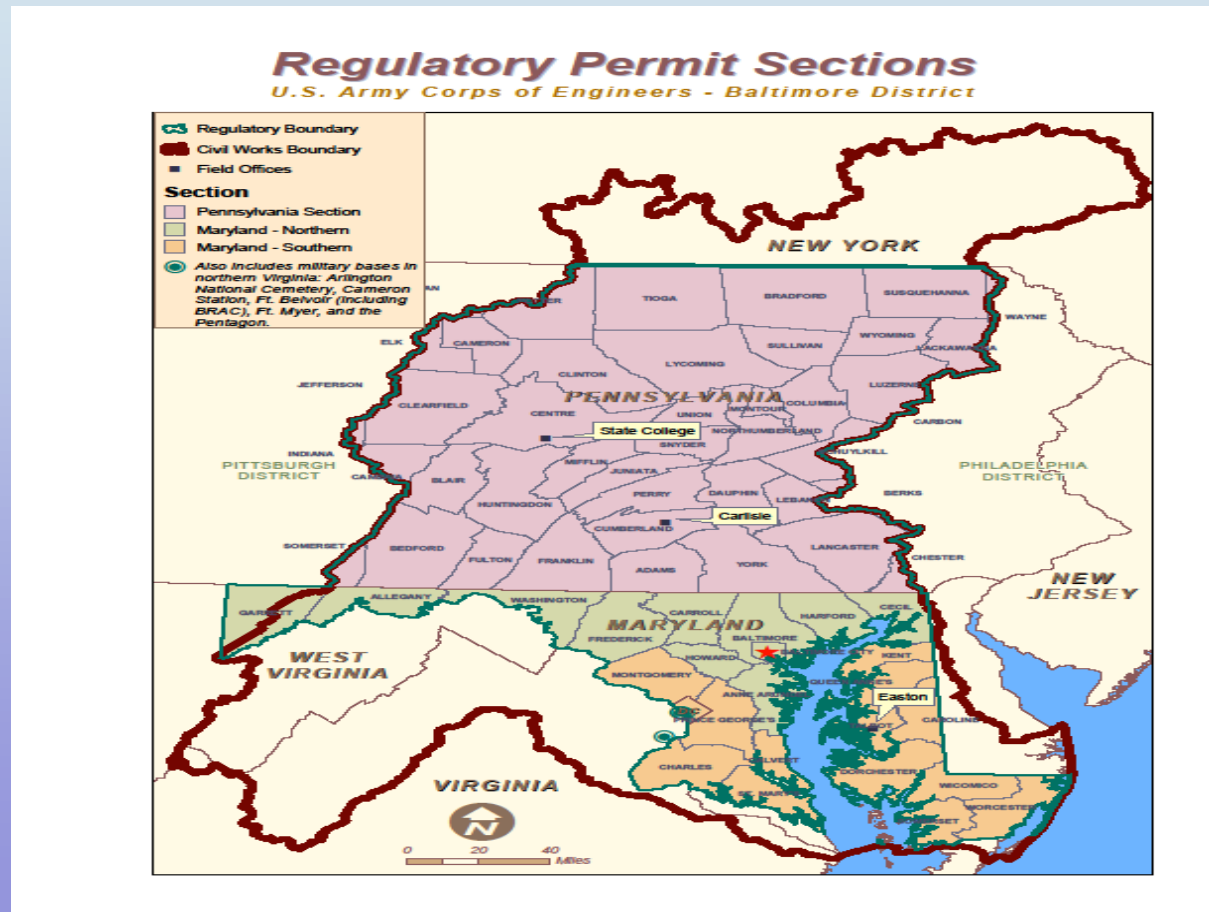
- Regulatory Background
- Types of Permits
- CWA Section 404(b)(1) Guidelines
- Alternatives Analysis
- Pre-application consultation



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Baltimore District Regulatory Boundaries



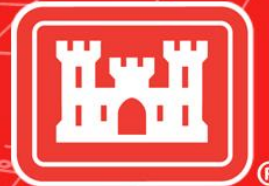


Regulatory Authorities

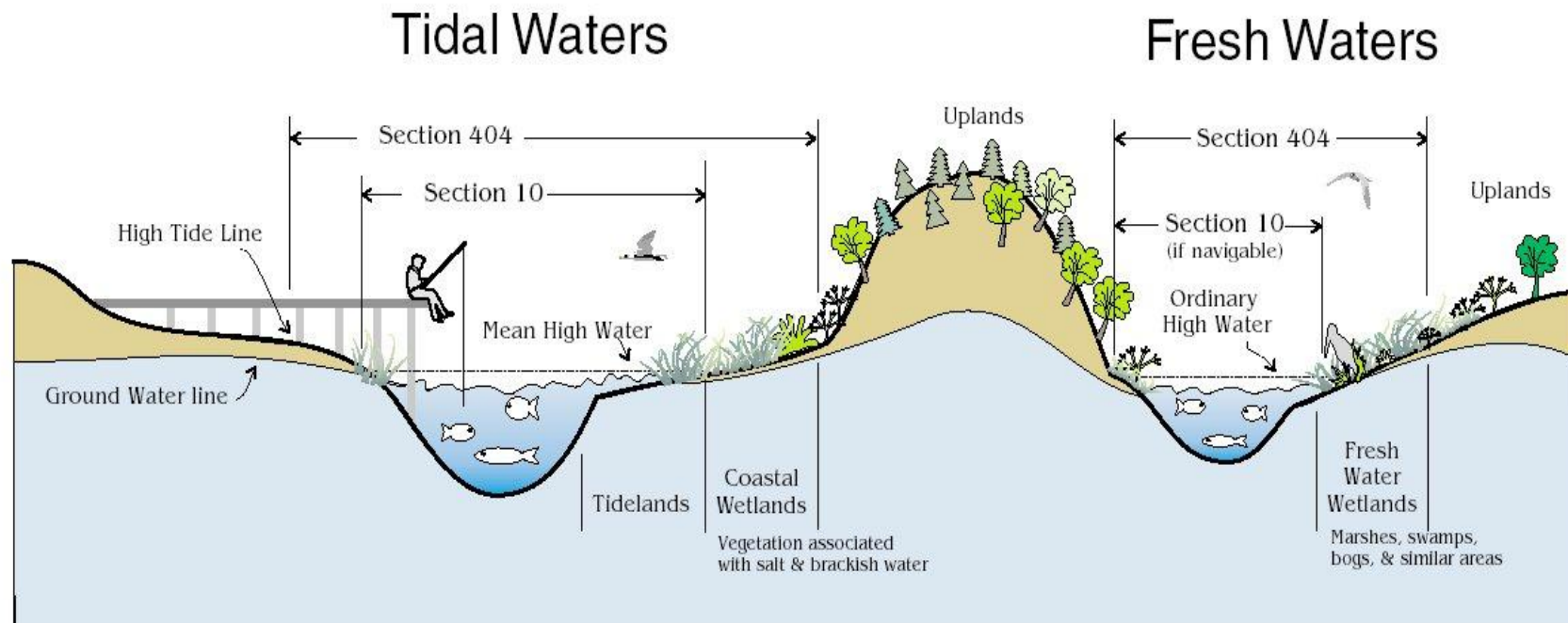
- Section 10 of the River and Harbor Act of 1899
 - Regulates work (e.g., dredging) and placement of structures in or over navigable waters of the U.S. (i.e., subject to ebb & flow of tide to mean high water line and/or those waters that are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce)
- Section 404 of the Clean Water Act



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CORPS OF ENGINEERS REGULATORY JURISDICTION



Typical examples
of regulated activities

Section 103 Ocean Discharge of Dredged Material

Ocean discharges of
dredged material

Section 404 Disposal of Dredged or Fill Material (all waters of the U.S.)

All filling activities, utility lines, outfall structures,
road crossings, beach nourishment, riprap,
jetties, some excavation activities, etc.

Section 10 All Structures and Work (navigable waters)

Dredging, marinas, piers, wharves,
floats, intake / outtake pipes,
pilings, bulkheads, ramps, fills,
overhead transmission lines, etc.



Clean Water Act Section 404

- Regulates the discharge of dredged or fill material (e.g., soil, rock, debris) into *all waters of the U.S., including jurisdictional wetlands*
- Waters of the U.S. include all navigable waters, tidal/non-tidal waters, wetlands, rivers, streams, tributaries, lakes, ponds, impoundments, etc.
- Permit required from the Corps to discharge dredged or fill material into waters of the US





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Types of Permits

- General Permits (GP):
 - Activities similar in nature and cause only minimal impacts
 - Minimum paperwork and delay
 - Minimize and mitigate through use of special conditions
 - Goal to finalize within 60 days of complete application
 - MDSPGP-3: project impacts (permanent and temporary) to waters of U.S. are *one acre or less*



Types of Permits

- Standard Individual Permits:
 - Potential for substantial environmental impacts
 - Public notice on specific project
 - Coordination with involved agencies, interested parties, and the general public
 - Opportunity for public hearing
 - On and off-site alternatives analysis may be required
 - Full public interest review
 - Environmental Assessment or EIS
 - Goal to finalize within 120 days of complete application



Clean Water Act Section 404

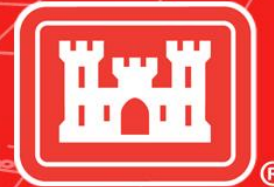
- The Corps' evaluation of a Section 404 permit application is a *two part test*, which involves whether the project complies with EPA's Clean Water Act Section 404(b)(1) Guidelines, and a public interest review
- The Guidelines contain the *substantive environmental criteria* used by the Corps in evaluating discharges of dredged or fill material into waters of the U.S.



Clean Water Act

Section 404(b)(1) Guidelines

- The Corps can only authorize the practicable alternative that is least damaging to the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.
- Least environmentally damaging practicable alternative (LEDPA).



Clean Water Act

Section 404(b)(1) Guidelines

The Corps also considers whether the project complies with other laws such as:

- Endangered Species Act
- National Historic Preservation Act
- Coastal Zone Management Act
- Section 401 Water Quality Certification





Clean Water Act Section 404(b)(1) Guidelines

- The Corps also considers whether the discharge would cause or contribute to *significant degradation* of waters of the U.S.



Clean Water Act Section 404(b)(1) Guidelines

- Discharges may be permitted under the Guidelines only if all appropriate and practicable steps are taken to *minimize the adverse impacts* of the discharge on the aquatic ecosystem, including compensating for unavoidable impacts.







Section 404

Project Purpose

- Defining the project purpose is critical to the evaluation of any project and in evaluating compliance with the Guidelines.
- The Corps defines the basic and overall project purpose(s) to ensure appropriate consideration of alternatives.



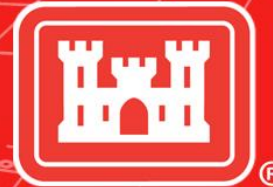
Section 404 Project Purpose

- The **overall project purpose** must be specific enough to define the applicant's needs, but not so narrow and restrictive as to preclude a proper evaluation of alternatives.
- Although considering the views of the applicant regarding project purpose and the existence (or lack of) practicable alternatives, we must determine and evaluate these matters with no control/direction from the applicant and without undue deference to the applicant's wishes.



Project Scope: “Single and Complete Project”

- All project elements from “A to Z” that result in a working/functional project is evaluated by the Corps under a single permit application
- Degree of impacts to waters of the U.S. will guide the permit process that the Corps will use (e.g., general permit vs. individual permit).



Section 404 Alternatives Analysis

- The alternatives analysis is the *centerpiece* of the Section 404 permit review process
- Must analyze a range of practicable alternatives (can include both on- and off-site alternatives)
- The stringency of the alternatives analysis is commensurate with degree of impact
- Review sequence: Avoid, minimize, mitigate



Section 404 Alternatives Analysis

- Under the Guidelines, the Corps can only authorize the *practicable* alternative which has the least adverse impact on the aquatic ecosystem (e.g., waters/wetlands)
- *Practicable* means available and capable of being done, taking into account cost, logistics, and existing technology, in light of overall project purposes



Section 404 Alternatives Analysis

- A fundamental precept of the 404 program is if aquatic impacts can be avoided, they should be avoided
- A more expensive alternative could still be considered a *practicable alternative*







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Westinghouse

Sykesville Middle School

Site

Apartments

Rainelle Road

State Park



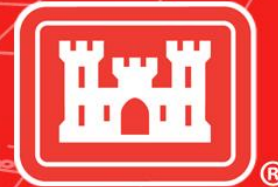
Public Interest Review

- Weigh and balance the benefits of a project against the reasonably foreseeable detriments to evaluate whether the project is in the “public interest”
- Numerous factors (beyond just aquatic impacts) evaluated as part of the public interest review conducted by the Corps



Pre-Application Consultation

- We meet with the applicant in advance of a permit application
- We offer input at the *planning stages* of a project
- Discuss alternatives to avoid/minimize aquatic impacts which the applicant should evaluate, such as:
 - ☑ alternative sites
 - ☑ realignments/reconfigurations of the site plan
 - ☑ reduction in project scope
 - ☑ bridges to span streams/wetlands
 - ☑ Natural stream restoration vs. gabions
 - ☑ trenchless construction for utility lines



Pre-Application Consultation

- We provide guidance on what can be permitted
- Expedites the permit process
- Pre-app meetings are time well spent
- Result in greater environmental protection
- Cost and time savings for applicants
- Recommended for larger projects and we are available to meet

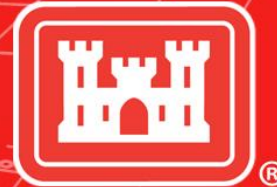


Goals

- Fair, reasonable, and consistent decisionmaking process
- Protect the aquatic environment
- Public service



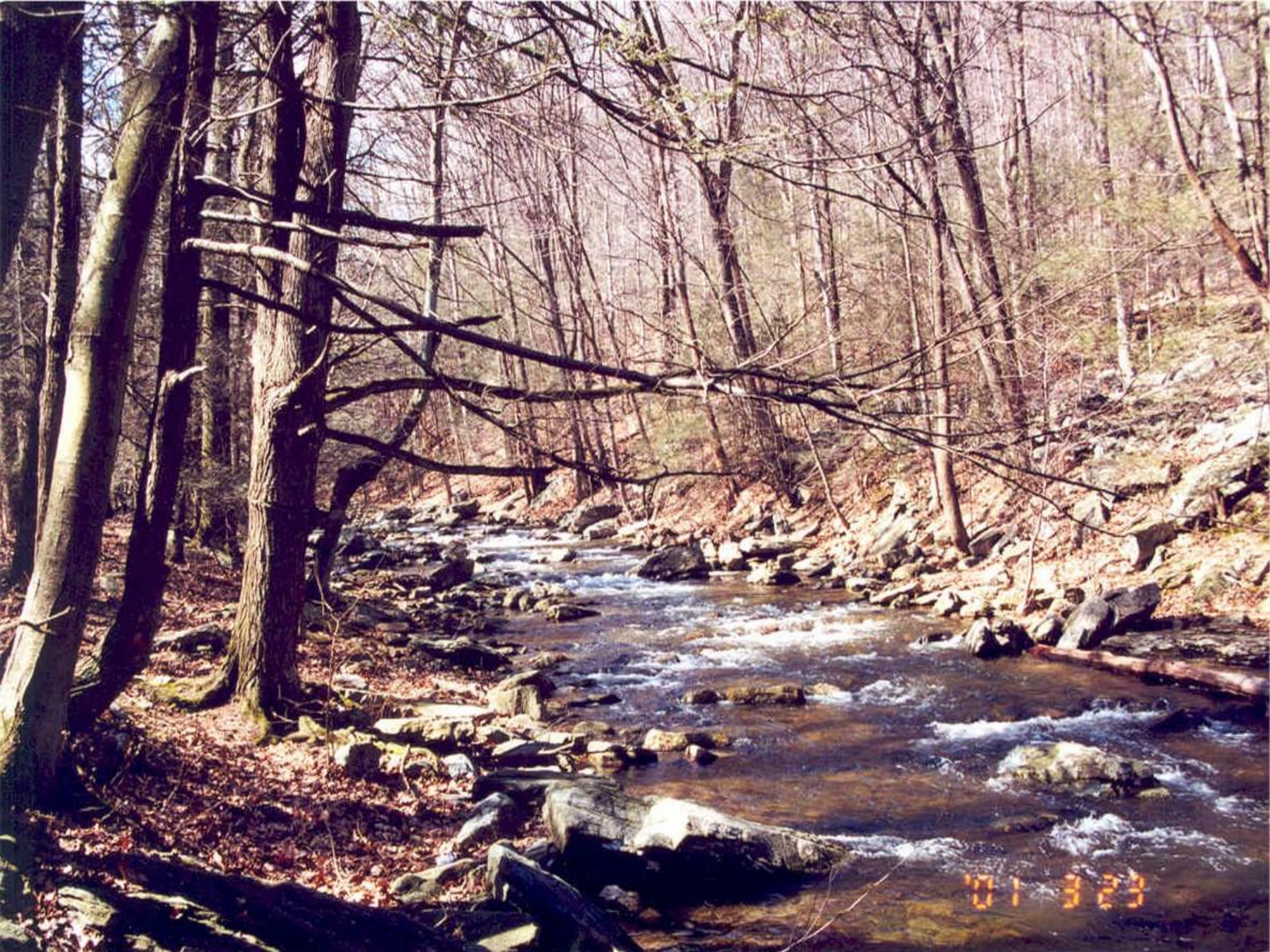
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Additional Information

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